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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JOSE S., a Person Coming Under the
Juvenile Court Law.

B218092
(Los Angeles County
Super. Ct. No. NJ24341)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

John C. Lawson II, Juvenile Court Referee. Affirmed.

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Stephanie C. Brennan and Dawn S. Mortazavi, Deputy Attorneys General, for Plaintiff and Respondent.

The trial court sustained a petition alleging that appellant Jose S. possessed marijuana for sale in violation of Health and Safety Code section 11359. The court found that appellant was a person described by Welfare and Institutions Code section 602, adjudged appellant to be a ward of the court, and placed appellant on home probation for a period not to exceed six months.

Appellant appeals from the orders sustaining the petition and adjudging him to be a ward of the court, contending that the trial court erred in denying his motion to suppress evidence. We affirm the trial court's orders.

Facts

On December 12, 2008, appellant was searched by Los Angeles Police Officer Alma Skefich and her partner Officer Aceves incident to appellant's arrest for truancy. Officer Aceves recovered a medicine container with five packages containing a total of 2.56 grams of a substance later determined to be marijuana. Officer Aceves also recovered \$60 in small bills from appellant. Appellant was taken to the police station. There, he waived his *Miranda* rights and admitted to Officer Skefich that he had been selling marijuana to his friends for seven months. He also wrote the following statement: "I told her that it was marijuana and that I had money, too, so they took me to the police station, and I told them that I sell it to people for \$10 each."

Suppression Hearing Facts

On Friday, December 12, 2008, about 8:45 a.m., Los Angeles Police Department Officer Alma Skefich was on patrol in the area of Anaheim and Wilmington Boulevards in Wilmington. She noticed several people, including appellant, crossing the street with backpacks. They appeared to her to be juveniles. Officer Skefich believed that the juveniles should have been in school.

Officer Skefich and her partner decided to conduct a pedestrian stop to investigate. They drove by the juveniles and asked them how old they were. At least some of them, including appellant, indicated that they were minors. Officer Skefich asked them where

they were going. They looked at each other and said that they were going to someone's house. Officer Skefich and her partner said, "Stop, we want to talk to you."

Appellant told the officers that he was under 18 and attended Carson High School. He said that he did not recall his home address. He also said that he did not know his telephone number or his parents' name. At that point, Officer Skefich decided to arrest appellant for truancy. She planned to take him to Carson High School to verify his identity and find out his parents' names and telephone numbers.

Officer Skefich conducted a patdown search of appellant, because he was technically under arrest and was going to be transported. Officer safety was a factor. During the patdown search, Officer Skefich felt a hard cylinder that was consistent with the size and shape of a film canister or medicine container. She asked appellant if he had anything illegal and he replied that he had marijuana. A male officer then conducted a more thorough patdown search of appellant and removed the cylinder. It contained packets of marijuana.

Discussion

Appellant contends that the trial court erred in denying his motion to suppress the marijuana found during the patdown search. He contends that the police lacked probable cause to arrest him for truancy and that the patdown search was therefore not incident to a lawful arrest. He further contends that the search was not valid as part of an investigatory stop.¹ We see no error in the denial of the suppression motion.

In reviewing a trial court's ruling on a motion to suppress, we view the facts in the light most favorable to the trial court's ruling and uphold any factual finding, express or implied, that is supported by substantial evidence. We independently determine whether as a matter of law the challenged search and seizure was proper under Fourth Amendment standards. (*People v. Hughes* (2002) 27 Cal.4th 287, 327.) This standard of

¹ Appellant agrees that a brief detention for the officers to investigate their suspicion of truancy was warranted.

review is equally applicable to juvenile court proceedings. (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

Probable cause exists when the totality of the circumstances would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime. (*People v. Kraft* (2000) 23 Cal.4th 978, 1037.)

Here, the juvenile court found that the initial questioning of appellant was proper to determine if he was a minor, and that once the officers verified that appellant was a minor, it was legitimate to detain him for further questions about truancy. Once the officers determined that appellant was truant, it was legitimate to arrest him for truancy, and to take (or plan to take) him to school to obtain further information. At that point, the court found, it was legitimate to do a patdown search of appellant.

Education Code section 48264 provides that a peace officer "may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education . . . found away from his or her home and who is absent from school without valid excuse" Education Code section 48265 provides that a peace officer who arrests or assumes temporary custody of a truant may deliver the truant to his parents or guardians or the school or to various other designated locations.

It is well settled that the Fourth Amendment permits a police officer, incident to an arrest, to conduct a search of the arrestee's person. (*In re Humberto O.* (2000) 80 Cal.App.4th 237, 241.) This includes an arrest pursuant to Education Code section 48264. (*Id.* at pp. 242-243.)

Here, appellant appeared to be of school age, was carrying a backpack and was on the street during school hours. Initial questioning confirmed that appellant was a minor who attended Carson High School. He did not provide any explanation for his failure to be in school. This is sufficient to establish probable cause to arrest appellant under Education Code section 48264. (*In re Humberto O., supra*, 80 Cal.App.4th at p. 242 [there was probable cause to arrest defendant under section 48264 when he was youthful looking and carrying a backpack, confirmed to officers that he attended school, did not

provide an excuse for being out of school and provided officers with false identification].)

Appellant correctly points out that there are a number of exemptions from school attendance requirements. (See, e.g., Ed. Code, §§ 48200, 48220-48232, 48400, 48402, 48410.) He contends that the officers did not ask him for an explanation of why he was not in school, and that without asking such a question, the officers had no reason to believe that he was impermissibly away from school. He concludes that they had no probable cause to arrest him.

The law does not require the officers to ask a minor if he has an excuse for not being in school. As this District Court of Appeal has explained, an arrest under Education Code section 48264 "is for one purpose only: to place the minors in a school setting as quickly as possible. Since the 48264 arrest is so limited as to purpose and action, and given the legislative determination that education is valid and important, then *it would appear that the failure to ask the minor if he has 'a valid excuse' for not being in school does not defeat probable cause to 'arrest' as that term is used in section 48264. Instead it is akin to an affirmative defense which the minor must assert to the officer or other person authorized under section 48264.*" (*In re Miguel G.* (1980) 111 Cal.App.3d 345, 359, italics added.)

The officers had probable cause to arrest appellant, and the search of appellant incident to that arrest was proper. We need not and do not reach appellant's alternate claim that, assuming the arrest was invalid, the patdown search could not have been lawfully executed as part of an investigatory stop. The trial court did not err in denying appellant's motion to suppress.

Disposition

The trial court's orders are affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.